## UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL No. 1456  Master File No. 01-CV-12257-PBS
This Document Relates to ALL ACTIONS.	Judge Patti B. Saris

## **AFFIDAVIT OF DANIEL W. RYAN**

- I, Daniel W. Ryan, pursuant to 28 U.S.C. §1746, on oath, depose and state as follows:
- 1. I am the Fund Administrator of United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund ("UFCW"). I have full knowledge of the matters stated herein and would testify hereto.
- 2. I understand that, in their opposition to Plaintiffs' Motion for Class Certification, the Track 1 Defendants have alleged that UFCW did not make co-payments under Medicare Part B. This claim is not accurate.
- 3. UFCW's health and medical benefits are provided under written benefit plans. A member's 20 percent co-payment under Medicare Part B is, and has been, an eligible expense under UFCW's plans during the Class Period. If Medicare pays a portion of a Fund member's claim under Medicare Part B, UFCW reimburses the remainder of the claim.
- 4. Pursuant to these plans, UFCW has made co-payments under Medicare Part B throughout the Class Period. These payments include the following (and are reflected in documents UFCW produced in this case at UFCW0009, UFCW0016470-798 (HIGHLY CONFIDENTIAL, because they reflect patient-identifying information)):

Claim No.	J Code	Drug	Allowed Charge	Medicare Payment	UFCW Payment
08104028	J1642	Heparin Lock Flush	2.50	2.00	0.50
	J1642	Heparin Lock Flush	2.50	2.00	0.50
	J2405	Zofran	194.88	155.90	38.98
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	J2405	Zofran	194.88	155.90	38.98
	J2405	Zofran	194.88	155.90	38.98
	J9000	Adriamycin	473.00	437.03	35.97
	J9000	Adriamycin	473.00	428.86	44.14
	J9000	Adriamycin	494.78	404.57	90.21
	J9000	Adriamycin	470.62	334.29	136.33
	J1642	Heparin Lock Flush	2.50	2.00	0.50
	J2405	Zofran	194.88	155.90	38.98
	J9000	Adriamycin	473.00	395.82	68.52
08117406	J7040	Sodium Chloride	5.36	4.31	1.08
07868942	J0640	Leucovorin Calcium	18.53	14.82	3.71
	J0640	Leucovorin Calcium	18.53	14.82	3.71
	J0640	Leucovorin Calcium	18.53	14.82	3.71
	J1626	Kytril	185.40	148.32	37.08
	J1626	Kytril	185.40	148.32	37.08
	J1626	Kytril	185.40	148.32	37.08
	J7040	Sodium Chloride	10.11	8.09	2.02
	J7040	Sodium Chloride	10.11	8.09	2.02
	J7040	Sodium Chloride	10.11	8.09	2.02

Claim No.	J Code	Drug	Allowed Charge	Medicare Payment	UFCW Payment
	J9190	Adrucil	5.06	4.05	1.01
	J9190	Adrucil	7.59	6.07	1.52
	J9190	Adrucil	7.59	6.07	1.52
	J1642	Heparin Lock Flush	50.00	18.07	31.93

5. The above information was gathered at my direction. UFCW ran a report of specific J-codes reimbursed by UFCW where a Fund member was also covered by other insurance. Once the report was created, I asked UFCW's claims department to identify those J-codes for which UFCW paid secondary to Medicare as described above. I then reviewed the report for accuracy. Because this search was only done on UFCW's active system and not on UFCW's back-up dates, it only reflects co-payments made from January 1, 2000, to April 30, 2003.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 12-15-04, 2004

Daniel W. Ryan